IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 944 OF 2005

M/s. S.B. Advertising .. Appellant

Vs.

Union of India and Anr. .. Respondents

Mr. P.K. Dhakephalkar with Smt.Deepa Bajaj for Appellant.

Mr. Suresh Kumar for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : October 21, 2005.

P.C.:

1. Heard Mr. Dhakephalkar the learned counsel for the appellant-plaintiff and Mr. Suresh Kumar the learned counsel for respondents-defendants.

2. This appeal arises from the order dated 1/10/2005 passed by the learned Judge of the City Civil Court at Mumbai dismissing Notice of Motion No.2934 of 2005 filed in Suit No.3324 of 2005.

3. The plaintiff was allotted the contract for

Sole Advertising Rights on FOB (Foot Over Bridge) on the railway station platforms of Western Railways i.e. Dadar, Vile-Parle, Andheri, Borivali and so on in all 15 suburban stations. As per the plaintiff the contract period was anywhere between 3 to 5 years and renewable after every year. In the month of April 2005 the plaintiff remitted an amount of Rs.7,54,200/- for renewal of the rental period from 25/4/2005 to 24/4/2006 in respect of Andheri Station. In the similar fashion the plaintiff remitted the renewal amount for all other Stations like Borivali, Bandra, Virar etc. On 12th of May 2005 the plaintiff forwarded a cheque for Rs.26,50,528/- to the AGM (Advertising) of Western Railways towards the rental charges for the period from 15/5/2005 to 14/5/2006 in respect of 15 Stations - FOB Sole Rights. While the plaintiff was under a bonafide belief that the rental period had been renewed upto the end of April 2006, it received a letter dated 5/8/2005 from the Divisional Manger, Western Railways informing that the contract period for all the railway stations was extended upto 31/8/2005 or till finalisation of the tender whichever was earlier. Said letter also indicated that the

contract period would in any case expire on 30/9/2005 and, therefore, the plaintiff was informed regarding the adjustments of the amounts deposited. It was indicated that an amount of Rs.3,99,160/- was in excess remitted with the Railways and it would be adjusted in other running contracts with prior administrative approval. By another letter dated 30/9/2005 the plaintiff was informed to remove the displays on the subject locations i.e. various FOBs at 15 suburban stations before 1/10/2005 as the contract would expire on 30/9/2005. On receipt of the first letter dated 5/8/2005 the plaintiff approached the trial court and filed Suit No.3234 of 2005 and prayed for a declaration that it was entitled to continue with the contract till the end of April 2006. The temporary injunction sought for was virtually in terms of the final reliefs prayed in the suit and the Notice of Motion for temporary injunction came to be dismissed by the impugned order.

4. The reasoning given by the trial court in connected matters has been considered in A.O. No.943

of 2005 which was dismissed in limine yesterday. The trial court noted that the contract between the parties was self determinative so far as the contract period was concerned and there was no vested right to the plaintiff to continue with the contract beyond the contract period. The trial court noted that in respect of all the FOBs the contract period had already come to an end on or before 30/9/2005 and, therefore, the temporary injunction could not be granted. This reasoning has been accepted to be proper by this court while deciding A.O. No.943 of 2005 and the same is required to be accepted for deciding this appeal as well, but with the exception of Borivali Railway Station. On scanning the paper books submitted by both the parties it is seen that for every suburban station the FOB contract has been termed differently so far as the contract terms are concerned, including the period of contract and having regards to these contracts for different Railway Stations, the order passed by the trial court and impugned in this appeal is required to be confirmed except for Borivali Station.

5. The Divisional Manager, Mumbai Central, passed an order and communicated to the plaintiff vide his letter dated 22/11/2000 granting contract of hoards and displays at Borivali Station FOB in different size. Clause No.6 of this communication reads as under:-

> "That the contracts for hoardings on such private structure will be renewable every year for a period of 5 years on usual terms and conditions and at then existing rates. After completion of 5 years the structure will become Railway's property and the decision on the allotment of the said site along with the structure will be at the discretion of Railway Administration."

5A. The above clause has guarantied tenure of 5 years for the contract but renewable every year on usual terms and conditions and at the then existing

rates. The decision to renew or not to renew after 5 years is at the discretion of the railways. Mr.Dhakephalkar, the learned counsel for the plaintiff, stated that the communication dated 22//11/2000 was received for the first time by the plaintiff on 7/2/2001 and the contract period of 5 years, therefore, commenced from that date. Even the documents submitted by the defendants also do not make out a case to dispute this position. Going by the same reasoning set out by the trial court that the contract period was governed by the respective contracts, it is evident that for the Borivali Station the initial period of contract of 5 years would expire on or about 6th February 2006 and, therefore, the railways would not be within their rights to claim that the contract for Borivali Railway Station expired on 30/9/2005, more so when the renewal fees has already been remitted by the plaintiff till April 2006. The plaintiff has thus made out a prima facie case for its continuance of contract till 6th February 2006 at the Borivali Station FOB and in terms of the sizes and numbers set out in the communication dated 22/11/2000.

6. Mr. Suresh Kumar the learned counsel for the defendants pointed out the communication dated 5/10/2005 issued by the Western Railways and addressed to M/s. Master Advertisers allotting the bulk advertising rights of 25 suburban stations FOBs that the contract has already been awarded in terms of the fresh tenders invited and, therefore, when the railways have already received a consideration of Rs.1,35,99,999/-, they cannot allow the plaintiff to continue with the contract after 5/10/2005. As per the learned counsel the railways may be at the most required to pay damages to the plaintiff for the Borivali Station FOB. By relying upon the decision in the case of Shanti Prasad Devi and anr. vs. Shankar Mahto and ors. reported in **(2005) 5 SCC 543**, it was urged by the learned counsel for the defendants to confirm the order of the trial court in toto and without making any exception for the Borivali Station. It is true that the plaintiff did not respond to the fresh tender but that by itself would not allow the railways to withdraw the contract before the expiry of 5 years of the contract period for the same reasons

which have been set out by the trial court in declining any temporary injunction.

7. For the above stated reasons, this appeal is disposed off by modifying the order of the trial court to the extent of Borivali Railway Station only. The defendants are directed not to disturb through their officers or any representatives or contractors the bulk advertising rights of the plaintiff for the Borivali Railway Station FOBs till 6th February 2006, more so when as on today the said displays/hoardings are at the respective places in the Borivali Railway Stations. The order of the trial court in respect of other railway stations does not call for any interference.

8. Needless to mention that the plaintiff is entitled to approach the railways for refund of the excess amount, if any.

(B.H. Marlapalle,J.)